REMARKS

Claims 1-13 are pending, of which claim 1 is an independent method claim with corresponding independent computer program product claim 4, claim 5 is an independent system claim, claim 7 is an independent method claim, and claim 10 is an independent method claim with corresponding independent computer program product claim 13. As shown above, no claims have been amended by this paper.

The Office Action rejected independent claims 1, 4, 7, 10, and 13 as being anticipated by Applicants' admitted prior art (APA).[1] The Office Action rejected the remaining claims, including independent system claim 5, under 35 U.S.C. § 103(a) as being unpatentable over APA in view of U.S. Patent No 5,812,784 to Watson et al. (*Watson*).

Rejections based on APA were initially raised in the previous office action (paper no. 15, mailed April 1, 2003). Applicants previous response explained that the APA rejections incorrectly characterized certain portions of Applicants' disclosure (which as discussed in greater detail below, Applicants maintain are not even admitted as prior art). The Office Action, however, found the arguments made in Applicants previous response to be unpersuasive. Specifically, the Office Action stated:

> Applicant argues that the admitted prior art (APA) does not disclose an abstracted connection interface for communicating the connection control characteristics of an underlying connection-oriented device to an application. Applicant's admission that APA discloses an abstraction interface (page 6 lines 19-22) nullifies any argument of APA not providing an abstracted connection interface for communicating the connection control characteristics of an underlying connection-oriented device to an application <u>because</u> by providing an abstraction interface the communication of connection characteristics between the connection-oriented device and an application via the network card device drivers and transport protocol drivers is achieved.

Office Action, p. 6 (emphasis added).

The Office Action's logic is erroneous for at least three reasons. First, the logic focuses on two words "abstract interface" and then, taking the two words out of the context in which they appear, expands those two words into a full sentence of APA, which is neither correct from a

---

technical standpoint nor an accurate reflection of what Applicants disclose. Second, the Office Action's rejection of claim 1 fails to show each any every claim limitation. Third, Applicants have not admitted that the disclosure cited in the Office Action's APA rejection is prior art.

Applicants respectfully submit that the sentence of APA alleged in the Office Action is not supported by the Specification and reflects a misunderstanding of Applicants' claimed invention as well as the technical background/context material found in the Specification. For comparison, with reference to Figure 2, lines 19-22 on page 6 of the Specification read as follows: "One advance in the art that has reduced the complexity associated with developing transport protocol drivers and network card device drivers is that of an integrating component that provides an abstracted interface to transport protocol driver[] developers and to network card device driver developers." Specification, p. 6, ll. 19-22 (emphasis added).

After explaining various benefits that the integrating component of Figure 2 provides, Applicants turn to a more detailed description in Figure 3, which is "a logical diagram showing a number of different parts of software for a connection-oriented hardware media that utilizes an integrating component, such as integrating component 36 [of Figure 2]." Specification, p. 8, ll. 9-11. Note, in particular, that the connection interface 72 and connection management 76 are part of the connection-oriented device driver 54 shown in Figure 3, and not integrating component 58. Accordingly, with the integrating component 58 illustrated in Figure 3, Applicants point out that the "connection interface and connection management functionality," such as "connection creation, and packetized network data control," "must be replicated for each and every connection-oriented device driver." Specification, p. 8, ll. 13-15 & 22-23. In other words, as recited in independent claims 1, 4, 7, 10, and 13 and discussed in further detail below, "the connection control characteristics of the underlying connection-oriented device related to the manner in which the connection-oriented device makes a connection for sending and receiving network data over a network" is not provided by the connection-oriented data transport, and therefore not disclosed in the passage cited in the Office Action.

"Figure 3 is simplified in order to focus on the two different channels that an application 66 would use to manage connection-oriented hardware." Specification, p. 9, ll. 5-6 (emphasis added). These two different channels are "the data channel through the data transport 62" and the "connection channel . . . by means of a connection interface 72" provided by "connection-oriented device driver 54." Specification, p. 9, ll. 7-17 (emphasis added).

Therefore, even assuming for the sake of argument that the abstract interface identified at lines 19-22 on page 6 of the Specification could be read as corresponding to the data channel (through data transport 62), there simply is nothing in the Specification to support the Office Action's contention that this identified abstract interface discloses the communication of connection control characteristics for connection-oriented hardware, which as shown in Figure 3 without Applicants invention, occurs through a connection interface and connection management that are replicated in each connection-oriented device driver. To assert otherwise, essentially requires ignoring the remainder of the application, including the statement at the end of Applicants' background indicating that it would be desirable to have an abstract connection interface. Specification, p. 11, ll. 15-19. Accordingly, Applicants respectfully submit that the rejection of independent claims 1, 4, 7, 10, and 13 under 35 U.S.C. § 102 based on alleged APA is improper, because the alleged APP is neither correct from a technical standpoint nor an accurate reflection of what Applicants disclose, and should be withdrawn.

For an anticipation rejection under 35 U.S.C. § 102, the reference must teach every aspect or element of the claimed invention. See MPEP §§ 706.02 & 2131. The Office Action's rejection of independent claims 1, 4, 7, 10, and 13 indicates that connection interface 72 described on page 9 at lines 12-17 of the Specification discloses Applicants first known application-level interface. Office Action, p. 3. Applicants note, however, that independent claims 1, 4, 7, 10, and 13 recite a first known application-level interface <u>of an integrating component</u> that is positioned between the application, a connection-oriented device driver associated with the connection-oriented device, and one or more data transport components. *See, e.g.,* Specification, Figure 6 & p. 23, l. 11 – p. 26, l. 9. Figure 3 clearly shows that connection interface 72 is not part of an integrating component, and furthermore, as discussed above, in describing Figure 3 Applicants point out that the "connection interface and connection management functionality . . . must be replicated for each and every connection-oriented device driver." Specification, p. 8, ll. 13-15. As a result, "each manufacturer must create the same connection management protocol functionality for an ATM card as every other manufacturer." Specification, p. 9, ll. 25-26. Accordingly, Applicants' Specification notes that "it would be desirable to provide [a] connection interface in an abstracted form so that the connection-oriented device driver development may be simplified." Specification, p. 11, ll. 17-19. Applicants, therefore, respectfully submit that the rejection of independent claims 1, 4, 7,

10, and 13 under 35 U.S.C. § 102 is improper, for failing to show every claim element, and should be withdrawn.

As Applicants have expressed previously, Figures 2-4 and the corresponding text in the Specification are not admitted prior art, but rather represent technical background or context material for various embodiments of Applicants invention. Applicants acknowledge that when an applicant <u>states</u> that something is prior art, it is taken as being available as prior art against the claims. MPEP § 2129. For example, labeling figures has been held to be an admission that what is pictured is prior art relative to applicant's invention. *Id.* Applicants have labeled Figure 1 as prior art. However, Figures 2-4 have not been so labeled. Further, the introduction of Figure 2 begins with: "One <u>advance</u> in the art . . . ." Specification, p. 6, l. 19 (emphasis added). Furthermore, Applicants respectfully submit that including the description of Figures 2-4 in a section labeled "<u>Present</u> State of the Art" is not an admission that the section necessarily contains prior art, without more, such as the labeling of Figure 1 as prior art. Therefore, the rejections of record that rely on Figures 2-4 and the corresponding text as APA are improper and should be withdrawn.

Applicants note for the record that by rejecting claims 2, 3, 5, 6, 8, 9, 11, and 12 under 35 U.S.C. § 103(a) as unpatentable over APA in view of *Watson*, the Office Action concedes that APA does not teach or suggest the limitations in these claims. Application No. 09/094,539 (this application), and U.S. Patent No. 5,812,784 to Watson et al. were, at the time the invention of Application No. 09/094,539 owned by or subject to an obligation of assignment to Microsoft Corporation. Therefore, in accordance with 35 U.S.C § 103(c), *Watson* is disqualified as 35 U.S.C. § 102(e) prior art. (Applicants' filed on June 12, 1998 and Watson issued September 22, 1998. As noted in the Office Action mailed December 21, 2001 (paper no. 5), a CPA was established on or after November 29, 1999 in order to disqualified another commonly owned patent (U.S. Patent No. 5,983,274 to Hyder et al.) under 35 U.S.C § 103(c). See MPEP § 702.02(l).) Due to the extensive searching performed in connection with the five issued office actions, Applicants expect that claims 2, 3, 5, 6, 8, 9, 11, and 12 should be found allowable, independent of the arguments presented above with respect to independent claims 1, 4, 7, 10, and 13 and their corresponding dependent claims.
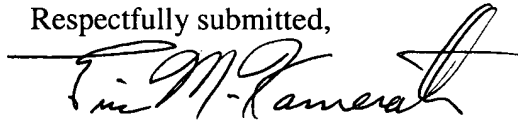
Applicants note for the record that any remaining rejections of record are now moot. Applicants, therefore, reserve the right to challenge any assertions in the Office Actions with

respect to the teachings of the prior art or Applicants' invention in the future, should Applicants deem such challenges desirable or necessary.

Based on at least the foregoing reasons, Applicants respectfully submit that the cited prior art fails to anticipate or make obvious Applicants claimed invention. Accordingly, Applicants believe that all pending claims are in condition for a prompt allowance. In the event that the Examiner finds any remaining impediment to an allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 12th day of March, 2004.

Respectfully submitted,

RICK D. NYDEGGER
Registration No. 28,651
ERIC M. KAMERATH
Registration No. 46,081
Attorney for Applicant
Customer No. 022913

KCS0000000763V001